IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4401 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SONAM TEXTILE PVT. LTD.

Versus

S K S RAWAT

Appearance:
MR RK PATEL for the Petitioner.
MR BB NAIK for the Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 08/05/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

Rule. Learned advocate Mr. B.B.Naik

waives service of Rule on behalf of the respondent. The petition is heard finally at the instance of both sides since it involves a very short point.

2. The grievance of the petitioner is that the C.I.T.-II, Surat has rejected the petitioner's application by the impugned order dated 19th March, 2001 for restoring the Revision Application to file. It is submitted that the authorities have been ignoring a division bench judgment of this Court in C.I.T. vs. Harsidh Construction Pvt. Ltd. reported in 242 ITR, 417 in which it was held that when tax deducted at source under the provisions of section 194-C of the Act was deposited in the Government account well within prescribed time and there was no loss of revenue, but only a failure to forward the certificate, the Tribunal was justified in cancelling the penalty under section 272-A(2)(g) of the Act in view of the bonafide mistake on the part of the assessee. It is stated that the SLP preferred against this decision of the High Court was rejected by the Supreme Court which fact is reported in (2001) 252 ITR (statutes), 60.

3. It appears from the record that even when the earlier revision was rejected on 5.2.2001, the matter was not considered on merits and it appeared that the assessee did not intend to pursue the matter. Now, the assessee has pointed out that the director of the company looking after income-tax matters was out of station and therefore, the matter could not be attended to. In view of the decision of this Court in Harsidh Construction Pvt. Ltd. (supra), the CIT-II, Surat should have considered the matter on merits instead of rejecting the application for restoring the Revision Application on the ground that there was no error apparent from the record for rectifying the earlier order. In fact, no order on merits was made, so there was no question of rectifying any order and the Commissioner of Income-tax overlooked the fact that the earlier order was virtually an order dismissing the revision application for default and therefore, the real question was whether that should be restored to file and be heard on merits.

4. In this view of the matter, it would be in the interest of justice to direct the Commissioner of Income-tax-II, Surat to hear the revision application of the petitioner on merits. The impugned orders dated 19.3.2002 at Annexure "I" and dated 5.2.2001 at Annexure "D" are hereby set aside with a direction to the Commissioner of Income-tax to hear the Revision Application on merits and dispose it of in accordance

with law. Rule is made absolute accordingly with no order as to costs.

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